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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jay B. Schiller

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06/28/2010

ARRIS

3871 Lakefield Drive
Suwanee, GA 30024

EXAMINER

BROWN, RUEBEN M

ART UNIT

PAPER NUMBER

2424

NOTIFICATION DATE

DELIVERY MODE

06/28/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mirho@fspllc.com

Office Action Summary	Application No. 09/759,935	Applicant(s) SCHILLER ET AL.	
	Examiner REUBEN M. BROWN	Art Unit 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments 9/28/2009 have been fully considered but they are not persuasive.

With respect to the rejection of Son, in view of Dodson, applicant on page 3, that “Logical Node ID” system of Son is different. However, examiner points out that col. 7, lines 55-65 shows that Logical Node ID may service up to all of the subscribers from a particular hub, i.e. area. Thus, at least in the instant that multiple subscribers in the same area, access the same content and therefore would be using the same Logical Node, then the same Logical Node ID is transmitted to the plurality of subscribers in the same area, which meets the claimed subject matter.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 2424

Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim(s) **42** is/are rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) recites/recite the following means plus function limitation: **'headend adapted to'**.

The claim limitation does not use the term "means for" or "step for" which triggers a rebuttable presumption that 35 USC § 112, ¶ 6, does not apply. However, this presumption may be rebutted if the claim limitation uses a term that is not an art-recognized structure to perform the claimed function, the term is modified by functional language, and the term is not modified by sufficient structure or material for performing the claim function. See *Ex parte Rodriguez*, 92 USPQ2d 1395, 1404-1406 (Bd. Pat. App. & Int. 2009).

Here, applicant's claim limitation begins with a term followed by functional language and the term is not modified by sufficient structure or material for performing the claimed function. Furthermore, the specification does not provide a description sufficient to inform one of ordinary skill in the art the meaning of the term; and the term is not an art-recognized structure to perform the claimed function. Accordingly, the limitation invokes 35 USC § 112, ¶ 6.

35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. "If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112." *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. *Aristocrat*, 521 F.3d at 1338, 86 USPQ2d at 1242.

This interpretation is supported by the fact that applicant actually uses the "means for" language in the specification, page 5, lines 3-9.3

In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function: **headend 100**.

However, the specification and drawings do not disclose sufficient corresponding structure for performing the claimed function. Applicant needs to provide specific support in the specification and/or drawings for the "means for" language, recited in the claims, in order to properly use coverage of the 35 USC, 6th paragraph.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Son, (U.S. Pat # 6,697,376) in view of Dodson, (U.S. Pat # 6,873,622).

Considering claim 42, the claimed VOD system, comprising:

'a headend adapted to associate a different group identifier with each physical transmission path from the headend to each plurality of subscriber terminals in a common area',
Son teaches that the Logical Node ID generator 102 generates a Logical Node ID, which is inserted into the data stream to be transmitted over the network 108 to all of the relevant subscriber stations, (Fig. 1; Fig. 2b; Fig. 3; Fig. 4; col. 7, lines 45-62; col. 8, lines 1-35; col. 9, lines 17-25; col. 9, lines 29-40). The claimed *'headend'* reads on the system 100a and/or cable headend 304 of Son, see Fig. 1; col. 3, lines 51-67 thru col. 4, lines 1-67 and Fig. 3 & col. 6, lines 32-50, respectively. Thus, the claim reads on at least two or more STB within a certain hub

Art Unit: 2424

receiving the same group ID from the server in Son, which is included in the reference, col. 7, lines 55-60.

'headend adapted to periodically transmit the group ID for a particular group along the associated physical transmission path', reads on the operation of Son, col. col. 3, lines 51-67 thru col. 4, lines 1-67; col. 7, lines 55-60.

Regarding additionally claimed, *'headend further adapted to receive a request for a VOD including the group identifier and to enable one or more modulators associated with the group identifier to pass the VOD downstream'*, Son discloses that the subscriber stations include the Logical Node ID in their messages, and the headend transmits the requested VOD over the appropriate modulator 106 (col. 4, lines 57-67; col. 5, lines 45-67; col. 9, lines 25-30).

As for the additionally claimed feature, *'headend adapted to receive a request including a particular group identifier'*, emphasis added, even though Son teaches that the Logical Node ID is transmitted upstream in messages, the reference does not explicitly state transmitting the Logical Node ID as part of a VOD request. Nevertheless Dodson, which is in the same field of endeavor, teaches that when a customer issues a request for a VOD program that the remote node numbers are added to the request, col. 4, lines 9-35 & Fig. 3, Step 42. The Broadband Digital Terminal, BDT 10, located within a central office receives the request that includes the remote node number(s), and uses the remote node number to at least verify the service, see col. 4, lines 8-39. The remote node numbers in Dodson, corresponds with the claimed group ID. It would

Art Unit: 2424

have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Son with the feature of receiving at a headend, a network node number (i.e., a group ID) that is associated with a requesting terminal, along with each request for service, at least for the purpose of verifying the customer's request service with instant customer's service entitlements & also ensuring the location of a subscriber terminal in the network, at the time of the service request, as taught by Dodson.

Considering claim 43, see Son, col. 2, lines 39-67; col. 4, lines 40-56; col. 8, lines 50-67.

Considering claim 44, Son teaches that the Logical Node ID may be periodically transmitted to the subscriber stations, (col. 8, lines 23-28; col. 9, lines 52-57).

Considering claim 45, Son teaches that the Logical Node ID may be sent as an MPEG stream, col. 8, lines 20-35.

Art Unit: 2424

Any response to this action should be mailed to:

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Alexandria, VA 22313-1450
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or faxed to:

(571) 273-8300, (for formal communications intended for entry)

Or:

(571) 273-7290 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Reuben M. Brown/
Patent Examiner, Art Unit 2424